

CHRISTENSEN JAMES & MARTIN

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*Attorneys for California Ironworkers Field Pension Trust,**California Ironworkers Field Welfare Trust, California and**Vicinity Field Ironworkers Annuity Fund, California Field**Ironworkers Vacation Trust Fund, California Field Ironworkers**Apprenticeship Training and Journeyman Retraining Fund,**Ironworkers Workers' Compensation Trust, California Field**Ironworkers Administrative Trust, and California**Field Ironworkers Labor Management Cooperative Trust***UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

The Trustees of the California
Ironworkers Field Pension Trust,
California Ironworkers Field Welfare
Trust, California and Vicinity Field
Ironworkers Annuity Fund, California
Field Ironworkers Vacation Trust Fund,
California Field Ironworkers
Apprenticeship Training and Journeyman
Retraining Fund, Ironworkers Workers'
Compensation Trust, California Field
Ironworkers Administrative Trust, and
California Field Ironworkers Labor
Management Cooperative Trust,

Plaintiffs,

vs.

Derr & Isbell Construction, LLC, a
Delaware limited liability company; Arch
Insurance Company, a Missouri
corporation; SureTec Insurance

Case No.: 2:20-cv-00716

COMPLAINT

1 Company, a Texas surety company;
 2 Merrill Iron & Steel, Inc., a Wisconsin
 3 Corporation; Nevada State Contractors
 4 Board, a Nevada regulatory agency;
 5 Liberty Mutual Company, a
 6 Massachusetts corporation; M. A.
 7 Mortenson Company, a Minnesota
 8 corporation; McCarthy Building
 9 Companies, Inc., a Missouri corporation;
 10 Federal Insurance Company, an Illinois
 11 corporation; and Mortenson-McCarthy
 Las Vegas Stadium, a Joint Venture, a
 general partnership; Hinner, Hinner,
 Rejek, LLC, a Wisconsin limited liability
 company; Hinner, LLC, a Wisconsin
 limited liability company,

12 Defendants.

13
 14 The Plaintiffs, Trustees of the California Ironworkers Field Pension Trust,
 15 California Ironworkers Field Welfare Trust, California and Vicinity Field
 16 Ironworkers Annuity Fund, California Field Ironworkers Vacation Trust Fund,
 17 California Field Ironworkers Apprenticeship Training and Journeyman Retraining
 18 Fund, Ironworkers Workers' Compensation Trust, California Field Ironworkers
 19 Administrative Trust, and California Field Ironworkers Labor Management
 20 Cooperative Trust ("Plaintiffs" or "Trust Funds"), acting by and through their
 21 attorneys, Christensen James & Martin, Chtd., hereby complain, assert and allege
 22 as follows:

23 **JURISDICTION & VENUE**

24 1. This Court has jurisdiction of this case pursuant to Section 502(e)(1) of
 25 the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29
 26 U.S.C. § 1132(e)(1), which grants the United States District Courts exclusive
 27 jurisdiction over civil actions brought by a fiduciary pursuant to Section 502(a)(3)

1 of ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of
2 ERISA or an employee benefit plan governed by ERISA. Such jurisdiction exists
3 without respect to the amount in controversy or the citizenship of the parties, as
4 provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).

5 2. This Court has jurisdiction pursuant to Section 301(a) of the Labor
6 Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a),
7 wherein United States District Courts are granted original jurisdiction over suits for
8 violation of contracts between an employer and labor organization in an industry
9 affecting commerce, without respect to the amount in controversy or the citizenship
10 of the parties.

11 3. Jurisdiction over state law claims exists pursuant to 28 U.S.C. § 1367(a).

12 4. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA,
13 29 U.S.C. § 1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), in
14 that this is the Judicial District where the breach took place.

15 **PARTIES**

16 5. The Trust Funds are express trusts created pursuant to written
17 declarations of trust, consistent with § 302(c), of the Labor-Management Relations
18 Act of 1947, as amended [29 U.S.C. § 186(c)(5)], existing to provide benefits to
19 participants in Southern Nevada. These trusts are “multi-employer plan[s]” within
20 the meaning of Section 3(37)(A) of ERISA [29 U.S.C. § 1002(37)(A)] and
21 “employee benefit plan[s]” or “plan[s]” within the meaning of Section 3(3) of
22 ERISA [29 U.S.C., § 1002(3)]. These trusts are subject to the regulations of ERISA
23 pursuant to Section 4(a) of ERISA [29 U.S.C. § 1003(a)], and bring this action in
24 accordance with Sections 502(d)(1), 502(a)(3) and 515 of ERISA, as amended [29
25 U.S.C. § 1001, *et seq.*]. At all times material herein, these trusts have existed to
26 provide employee benefits, such as health, welfare, and pensions, to their
27 beneficiaries and plan participants.

1 6. The Trustees of the Trust Funds are “named fiduciar[ies],” “plan
2 administrator[s]” and “plan sponsor[s]” and each is an individual “fiduciary,”
3 within the meaning of 29 U.S.C. § §1102(a), 1002(16), & (21), with respect to
4 collection of contributions due to the Trust Funds and related matters.

5 7. Defendant Derr & Isbell Construction, LLC (“Derr”) is a Delaware
6 limited liability company and construction contractor operating in Nevada under
7 Nevada Contractor’s License No. 0082556, C-14 Steel Reinforcing and Erection.

8 8. Arch Insurance Company (“Arch”) is a Missouri corporation that issued
9 Contractors Licensing Bond No. SU1162676 in the amount of \$50,000.00 (“Arch
10 Bond”) so that Derr may hold a contractor’s license in the State of Nevada.

11 9. SureTec Insurance Company (“SureTec”) is a Texas surety that issued
12 Contractors Licensing Bond No. 5236219 in the amount of \$50,000.00 (“SureTec
13 Bond”) so that Derr may hold a contractor’s license in the State of Nevada.

14 10. Merrill Iron & Steel, Inc. (“Merrill”) is a Wisconsin Corporation and
15 construction contractor operating in Nevada under Nevada Contractor’s License
16 No. 82641, C-14(B) Structural Steel.

17 11. Nevada State Contractors Board (“NSCB”) is a Nevada regulatory
18 agency that governs contractors in the State of Nevada that accepted a \$50,000.00
19 cash deposit (“Merrill Licensing Bond”) pursuant to NRS 624.270(1)(b) for the
20 purpose of Merrill obtaining a contractor’s license in the State of Nevada.

21 12. Liberty Mutual Company (“Liberty”) is a Massachusetts corporation
22 that issued payment bond No. 354-037-605 (“Payment Bond”), with Merrill as
23 principal, for the payment of labor debts incurred by Merrill and its subcontractor
24 Derr for work performed in the construction of the Allegiant Stadium aka Raiders
25 Stadium located at 3333 Al Davis Way in Las Vegas, Clark County, Nevada
26 (“Project”).

27 13. M. A. Mortenson Company (“Mortenson”) is a Minnesota corporation

1 and construction contractor operating in Nevada under Nevada Contractor's
2 License No. 0072732, AB General Engineering and General Building.

3 14. Federal Insurance Company ("Federal") is an Illinois corporation that
4 issued Contractors Licensing Bond No. 8216-73-99 in the amount of \$50,000.00
5 ("Mortenson Licensing Bond") so that Mortenson may hold a contractor's license
6 in the State of Nevada.

7 15. McCarthy Building Companies ("McCarthy") is a Missouri corporation
8 and construction contractor operating in Nevada under Nevada Contractor's
9 License No. 0066125, AB General Engineering and General Building.

10 16. Federal also issued Contractors Licensing Bond No. 8184-24-79 in the
11 amount of \$50,000.00 ("McCarthy Licensing Bond") so that McCarthy may hold a
12 contractor's license in the State of Nevada.

13 17. Mortenson-McCarthy Las Vegas Stadium, a Joint Venture is a general
14 partnership formed between Mortenson and McCarthy for the purpose of
15 constructing the stadium ("Allegiant Stadium" or "Raiders Stadium") in Clark
16 County, Nevada pursuant to a development agreement with the Clark County
17 Stadium Authority.

18 18. Hinner, Hinner, Rejek, LLC ("HHR") is a Wisconsin limited liability
19 company that, upon information and belief, executed an Indemnification Agreement
20 requested by NSCB so that Merrill could receive a contractor's license from NSCB.

21 19. Hinner, LLC ("Hinner") is a Wisconsin limited liability company that,
22 upon information and belief, executed an Indemnification Agreement requested by
23 NSCB so that Merrill could receive a contractor's license from NSCB.

24 **GENERAL ALLEGATIONS**

25 20. As general partners of Mortenson-McCarthy JV, Mortenson and
26 McCarthy are jointly and severally liable for the debts and claims asserted by the
27 Trust Funds for work associated with the Project.

1 21. The Project is being constructed pursuant to a Project Labor Agreement
2 (“PLA”).

3 22. The PLA requires contractors performing work on the Project to make
4 contributions to benefit trust funds in accordance with the master labor agreement
5 of each union signatory to the PLA.

6 23. Mortenson-McCarthy JV is signatory to the PLA.

7 24. Mortenson is signatory to the PLA.

8 25. McCarthy JV is signatory to the PLA.

9 26. Merrill is signatory to the PLA.

10 27. Derr is signatory to the PLA.

11 28. Derr also signed an Independent Agreement with the District Council of
12 Iron Workers of the State of California and Vicinity (“District Council”) and Local
13 433 (defined below) where it agreed to be bound by the terms of the Iron Workers
14 State of California and Portions of Nevada ... and District Council of State of
15 California and Vicinity Master Labor Agreement (“MLA”).

16 29. International Association of Bridge, Structural, Ornamental and
17 Reinforcing Iron Workers, Local No. 433 (“Local 433”) is a union signatory to the
18 PLA and governed by the MLA as a local union of the District Council.

19 30. Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill, and Derr were
20 required to make contributions to the Trust Funds for work performed on the Project
21 pursuant to the terms of the PLA and MLA.

22 31. Employers subject to the MLA agree to be bound by the provisions of
23 trust agreements that govern the Trust Funds (“Trust Agreements”), including but
24 not limited to such items as interest, costs, and legal fees.

25 32. Employers subject to the MLA have reporting and payment obligations
26 to the Plaintiffs for covered work performed by their employees.

27 33. Work performed by the employees of Mortenson-McCarthy JV,

1 Mortenson, McCarthy, Merrill, Derr and/or their subcontractors is work covered by
2 the PLA and MLA.

3 34. The Trust Funds are intended beneficiaries of the PLA.

4 35. The Trust Funds are intended beneficiaries of the MLA.

5 36. The Trust Funds are intended beneficiaries of the Derr Independent
6 Agreement.

7 37. At all times material herein, Mortenson-McCarthy JV, Mortenson,
8 McCarthy, Merrill, Derr and/or their subcontractors were obligated submit written
9 reports to the Trust Funds on a timely basis showing the identities of all employees
10 performing covered work, and the number of hours worked by or paid to these
11 employees for covered work performed (“Contribution Reports”).

12 38. Contribution Reports must be submitted to the Trust Funds even when
13 there are zero hours to report.

14 39. Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill, Derr and/or
15 their subcontractors promised to pay fringe benefit contributions to the Trust Funds,
16 on a monthly basis at specified rates, for each hour worked by, or paid to, employees
17 for covered work.

18 40. Pursuant to the written terms of the Trust Agreements and *Cent. States,*
19 *Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559 (1985), the Trust
20 Funds undertake periodic reviews (audits) of contributing employers’ payroll
21 records to test each employer’s compliance with the report and payment obligations
22 described herein.

23 41. Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill, Derr and/or
24 their subcontractors are each individually required to submit written reports to the
25 Trust Funds from the time each executed or assented to the PLA, MLA and/or the
26 Independent Agreement, as the case may be, through the present date.

27 42. The Trust Funds have made written demand for reports and payments to

1 Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill and Derr.

2 43. Full payment has not been received by the Trust Funds.

3 44. Audits have not been allowed by the Defendants.

4 45. It has become necessary for the Trust Funds to retain legal counsel and
5 initiate this lawsuit to protect their legal rights under the PLA, MLA, Independent
6 Agreement, Trust Agreements, and ERISA.

7 46. Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill, Derr and/or
8 their subcontractors are each individually obligated to submit written reports, to
9 submit to a compliance audit, and to pay the Trust Funds all unpaid fringe benefit
10 contributions plus accrued interest, liquidated damages, attorney's fees, costs of
11 suit, and audit costs, pursuant to the PLA, MLA, Independent Agreement, Trust
12 Agreements, and 29 U.S.C. § 1132(g)(2).

13 **FIRST CAUSE OF ACTION**

14 **[Breach of Contract & Violation of ERISA - 29 U.S.C. § 1132]**

15 **[Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill, Derr]**

16 47. Plaintiffs herein restate and reallege the above allegations.

17 48. Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill, Derr and/or
18 their subcontractors are contractually delinquent for failing to remit reports for
19 covered work performed by their employees and failing to pay contributions and/or
20 other contract damages owed to the Trust Funds.

21 49. The Trust Funds are entitled to receive monthly remittance reports from
22 each identified contractor and all fringe benefit contributions, interest, and
23 liquidated damages owed to the Trust Funds pursuant to the PLA, MLA,
24 Independent Agreement, Trust Agreements and 29 U.S.C. § 1132(g)(2).

25 50. A known delinquency of \$1,146,618.37 ("Identified Delinquency") for
26 work performed on the Project is owed to the Trust Funds by the identified
27 contractors and their subcontractors.

58. The Trust Funds are entitled to injunctive relief affirmatively compelling Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill, and Derr to: i) submit all past due monthly remittance reports; ii) submit monthly remittance reports going forward during the effective term of the PLA; iii) submit to a compliance audit; iv) to pay all past due contributions and related damages to the Trust Funds; and v) to pay all contribution amounts on a timely basis going forward.

59. The Trust Funds are entitled to injunctive relief affirmatively compelling Derr to: i) submit all past due monthly remittance reports; ii) submit monthly remittance reports going forward during the effective term of the Independent Agreement and/or MLA; iii) submit to a compliance audit; iv) to pay all past due contributions and related damages to the Trust Funds; and v) to pay all contribution amounts on a timely basis going forward.

THIRD CAUSE OF ACTION

[Claim on Payment Bond]

[Liberty]

60. Plaintiffs herein restate and reallege the above allegations.

61. The Payment Bond was issued for the purpose paying labor claims for work performed by Merrill and its subcontractors on the Project.

62. Derr acted as a subcontractor to Merrill for work on the Project.

63. Contributions owed to the Trust Funds constitute labor obligations for which the Payment Bond is liable.

64. Liberty must pay to the Trust Funds an amount from the penal sum of the Payment Bond sufficient to meet the obligations owed to the Trust Funds.

FOURTH CAUSE OF ACTION

[Claim on Licensing Bonds]

[Arch, SureTec, NSCB, Federal]

65. Plaintiffs herein restate and reallege the above allegations.

1 66. The Arch Bond, SureTec Bond, Merrill Licensing Bond, and McCarthy
2 Licensing Bond (collectively “Licensing Bonds”) are all bonds issued pursuant to
3 NRS 624.270.

4 67. Each of the Licensing Bonds is in favor of the State of Nevada for the
5 benefit of any person who performed labor on or about the Project.

6 68. Contributions to the Trust Funds constitute wages for which each of the
7 Licensing Bonds is individually liable.

8 69. The Trust Funds, as labor claimants, are entitled to priority in payment
9 from each of the Licensing Bonds, pursuant to NRS 624.273(6), for delinquent
10 contributions owed for work on the Project.

11 **FIFTH CAUSE OF ACTION**

12 **[Original Contractor Liability]**

13 **[Mortenson-McCarthy JV, Mortenson, McCarthy, Merrill]**

14 70. Plaintiffs herein restate and reallege the above allegations.

15 71. Mortenson-McCarthy JV acted as an original contractor for work on the
16 Project.

17 72. Mortenson acted as an original contractor for work on the Project.

18 73. McCarthy acted as an original contractor for work on the Project.

19 74. Merrill acted as an original contractor for work on the Project.

20 75. Each original contractor is subject to liability pursuant to NRS 608.150
21 for the labor debts of its subcontractor(s) for work on the Project.

22 76. Derr acted as a subcontractor to each original contractor (Mortenson-
23 McCarthy JV, Mortenson, McCarthy, and Merrill) when performing work on the
24 Project.

25 77. Each original contractor that had Derr in its line of subcontractors is
26 liable to the Trust Funds for the amounts owed to the Trust Funds by Derr for work
27 performed on the Project.

1 on a monthly basis, when they become due, at the specified rates for each hour
2 employees perform covered work; and (iii) compelling Mortenson-McCarthy JV,
3 Mortenson, McCarthy, Merrill and Derr to submit records to the Trust Funds for
4 payroll compliance audits;

5 2. For the Court's order compelling submission to the Trust Funds of
6 previously un-submitted monthly remittance reports;

7 3. For judgment against Mortenson-McCarthy JV, Mortenson, McCarthy,
8 Merrill and Derr for unpaid fringe benefit contributions owed to the Trust Funds in
9 an amount to be proven at trial;

10 4. For judgment against Mortenson-McCarthy JV, Mortenson, McCarthy,
11 Merrill and Derr for liquidated damages in an amount to be proven at trial;

12 5. For judgment against Mortenson-McCarthy JV, Mortenson, McCarthy,
13 Merrill and Derr accrued interest on all unpaid contributions from their due date
14 until paid;

15 6. For judgment against Mortenson-McCarthy JV, Mortenson, McCarthy,
16 Merrill and Derr for audit costs in an amount to be proven at trial;

17 7. For judgment against Mortenson-McCarthy JV, Mortenson, McCarthy,
18 Merrill and Derr for reasonable attorney's fees;

19 8. For judgment against Mortenson-McCarthy JV, Mortenson, McCarthy,
20 Merrill and Derr for costs of suit incurred herein;

21 9. For judgment against Liberty and the Payment Bond in an amount to be
22 proven at trial;

23 10. For judgment against, Arch and the Arch Bond, SureTec and the
24 SureTec Bond, NSCB and the Merrill Licensing Bond; and Federal and the
25 Mortenson Licensing Bond and McCarthy Licensing Bond for the full sum of each
26 of the licensing bonds;

27 11. For judgment against HHR and Hinner as indemnitors of Merrill for an

1 amount proven against Merrill at trial;

2 12. For such additional relief as may be provided for by 29 U.S.C. §
3 1132(g);

4 13. For such additional relief as this Court deems just and proper.

5 DATED this 21st day of April 2020.

6 CHRISTENSEN JAMES & MARTIN, CHTD.

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